Supreme Court, U. S.
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APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-953

MICHAEL O' SHEA, AS MAGISTRATE OF THE CIRCUIT COURT FOR ALEXANDER COUNTY, ILLINOIS, ET AL.,

Petitioners,

vs.

EZELL LITTLETON, ET AL.

No. 72-955

W. C. SPOMER, ET AL.,

vs.

EZELL LITTLETON, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 3, 1973
CERTIORARI GRANTED APRIL 2, 1973

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APPENDIX

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

July 23, 1970—Plaintiffs' Verified Complaint filed in U. S. District Court for the Eastern District of Illinois.

August 25, 1970—Defendants' motion to strike complaint and to dismiss cause (O'Shea and Spomer).

September 14, 1970—Defendant's motion to dismiss or in the alternative motion to strike (Berbling—now succeeded by W. C. Spomer).

October 8, 1970—Plaintiffs' motion for leave to file Amended Complaint.

October 8, 1970—Order granting plaintiffs' motion to file Amended Complaint.

October 29, 1970—Defendants' motion to dismiss or in the alternative motion to strike Amended Complaint (Berbling and Shepherd).

November 10, 1970—Defendants' election to stand on motion to strike complaint and dismiss cause. (O'Shea and Spomer).

March 23, 1971—Memorandum and Order of the District Court for the Eastern District of Illinois.

April 15, 1971—Plaintiffs' notice of appeal to Seventh Circuit.

October 6, 1972—Opinion and judgment Court of Appeals for the Seventh Circuit.

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Illinois

Filed July 23, 1970

EZELL LITTLETON, MANKER HARRIS, JAMES WILSON, RUSSELL DEBERRY, ROBERT MARTIN, PRESTON EWING, JR., JAMES BROWN, HERMAN WHITFIELD, LEROY LAMBERT, by his Father and Next Friend, HOBERT LAMBERT, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

PEYTON BERBLING, individually and as States Attorney for Alexander County, Illinois, CARL MEISENHEIMER, as Police Commissioner of the City of Cairo, Illinois, ROY BURKE, as Chief of Police of the City of Cairo, Illinois, MICHAEL O'SHEA, as Magistrate of the Circuit Court for Alexander County, Illinois, DOROTHY SPOMER, as Associate Circuit Judge for Alexander County, Illinois,

Defendants.

Civil Action
No. 70-103

Equitable Relief
Requested

VERIFIED COMPLAINT

1. This is a civil action under Title 42 U. S. C. sections 1983, 1985 and 1986, for damages and for a preliminary and permanent injunction and other equitable relief, to enjoin the deprivation, under color of law, custom and usage of Alexander County and the City of Cairo, Illinois, of plaintiffs and members of their class rights, privileges and immunities guaranteed by the First, Sixth, Eighth, Thir-

teenth and Fourteenth Amendments to the Constitution of the United States and by Title 42 U. S. C. sections 1983, 1985 and 1986.

2. Jurisdiction is conferred on this Court by Title 28 U. S. C. sections 1331 and 1343(3) and (4). The amount in controversy exceeds ten thousand dollars.

3(a). Plaintiffs are black citizens of the City of Cairo, Alexander County, the State of Illinois and United States, with the exception of plaintiff Harris and Brown, who are white citizens of the City of Cairo, Alexander County, the State of Illinois and the United States.

(b) They bring this action as a class action, individually and on behalf of all other persons similarly situated.

(c) The class includes all those who, on account of their race or creed and because of their exercise of First Amendment rights, have in the past and continue to be subjected to the unconstitutional and selectively discriminatory enforcement and administration of criminal justice in Alexander County.

4(a). Plaintiffs are financially poor persons.

(b) They bring this action as a class action, individually and on behalf of all other persons similarly situated.

(c) The class includes all those who, on account of their poverty, are unable to afford bail, or are unable to afford counsel and jury trials in city ordinance violation cases.

5. As to said classes of persons:

(a) they are so numerous that joinder of all members is impracticable; (b) there are questions of laws and fact common to the class; (c) the claims of plaintiffs are typical of the claims of the class; (d) plaintiffs will fairly and adequately protect the interests of the class; and (e) defendant has acted and refuses to act on grounds generally applicable to the classes, thereby making appropriate final relief with respect to the class as a whole.

6(a). Defendant Berbling is, and was at all times mentioned herein, the States Attorney for Alexander County, and a citizen and resident of that County, the State of Illinois and the United States.

(b) As States Attorney he is the chief prosecuting attorney for said county.

(c) He has authority to determine when criminal complaints may be filed and warrants issued, whether and how to prosecute violations of state statutes, what the charges should be against accused persons, and also to recommend dismissals and reductions of charges, optimum sentences, and the terms thereof.

(d) On information and belief defendant Berbling may also recommend the amount of bond and whether a convicted defendant should pay costs.

7. Defendant Meisenheimer is, and was at all times mentioned herein, a Police Commissioner of the City of Cairo, and a citizen and resident of the City of Cairo, State of Illinois, and the United States. As such he supervises the activities of the Cairo Police Department and is the immediate supervisor of defendant Roy Burke.

8. Defendant Burke is and was at all times mentioned herein, the Chief of Police of the City of Cairo. He is a citizen and resident of said city, the State of Illinois, and the United States. As Chief of Police, he has the authority to enforce the ordinances of the City of Cairo and the laws of the State of Illinois. He is the chief law enforcement officer of the city and as such directly administers the affairs of the Cairo City Police Department.

9(a) Defendant O'Shea is, and was at all times mentioned herein, the Magistrate for the Circuit Court of Alexander County, and a citizen and resident of that County, the State of Illinois and the United States. As such, he has the authority to set bond for all persons

charged with crime either under state law or city ordinance. He also has the authority to handle preliminary hearings, trials of ordinance violations and misdemeanors. In each of such cases, he determines the outcome and, in the case of ordinances and misdemeanors, the sentence to be imposed.

(b) Defendant Spomer is, and was at all times mentioned herein, the Associate Circuit Judge for Alexander County, Illinois, and citizen and resident of that county, the State of Illinois and the United States. As such, she had the authority to act in all criminal matters in Alexander County.

FIRST CLAIM FOR RELIEF

10. Since the early 1960's black citizens of Cairo, together with a small number of white persons on their behalf, have been actively, peaceably and lawfully seeking equality of opportunity and treatment in employment, housing, education, participation in governmental decision making and in ordinary day-to-day relations with white citizens and officials of Cairo. As an important part of their protest plaintiffs have participated in and encouraged others to participate in an economic boycott of merchants of the City of Cairo who plaintiffs consider have engaged in racial discrimination.

11. This active and lawful seeking after long overdue constitutional rights has generated and continues to generate a great deal of tension and antagonism from the white citizens and officials of Cairo.

12(a). Defendant Berbling has long been one of those citzens and officials who have, on information and belief, stood against plaintiffs and their class.

(b) Defendant was an organizer and officer of the Committee of Ten Million, also known as the "White Hats", an organization, on information and belief, designed to

deter plaintiffs and their class from seeking or obtaining their constitutional rights.

(c) Said organization was formed in 1967 and in 1969 was ordered to disband by the State of Illinois as an illegal vigilante organization.

13. As is hereinafter set forth more fully, defendant Berbling has engaged in, and continues to engage in, a pattern and practice of conduct under color of law, custom and usage of Alexander County, Illinois, in the administration of criminal justice in said county, all of which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of law and the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

14. Defendant Berbling has denied and continues to deny to plaintiffs and members of their classes as described in paragraphs 3 and 4 herein of their constitutional rights in the following ways:

(a) It has been and continues to be the practice of defendant to refuse to initiate criminal proceedings and to refuse to hear criminal charges against members of the white race upon the complaints of members of the plaintiff class, for example:

(1) On March 28, 1969, defendant refused to permit James Wilson to file criminal charges against a white man who pointed a gun at him as he (Wilson) attempted to move into the house next door to Charlie Sullivan on 22nd Street, in Cario, Illinois. Sullivan threatened Wilson with the gun and told him to move the truck containing household furnishings and leave the area.

(2) In January 1970 defendant refused to permit Robert Martin to file charges against a white man, Charlie Sullivan, who tried to run him down

in a truck while peacefully marching in exercise of his First Amendment rights.

(3) In June 1970 defendant refused to permit Ezell Littleton to file charges against a white man who without cause or justification assaulted and battered him.

(4) In June 1970 defendant refused to permit Rev. Manker Harris to file charges against two white policemen of the City of Cairo for attempted murder and/or malicious prosecution.

(5) In May 1969 plaintiff Ewing and eight others could have and desired to bring criminal charges against a white man who threatened them with a shotgun, but did not because they knew of defendants practice of refusing to take complaints and were discouraged from making useless gestures.

(b) It has been and continues to be the practice of defendant Berbling in the few criminal proceedings he has instituted against white persons at the behest of plaintiffs, to inadequately prosecute the cases in order to lose, or to settle them on terms more favorable than those against blacks;

(c) It has been and continues to be the practice of defendant Berbling to request or recommend, in cases involving plaintiffs and members of their class, substantially greater bonds and sentences than requested or recommended in cases involving white persons;

(d) It has been and continues to be the practice of defendant to charge plaintiffs and members of their class with significantly more serious charges for conduct which would result in no charge or a minor charge against a white person.

15. Each of said practices is carried out wilfully and maliciously with intent to deprive plaintiffs and members of their class of the benefits of the criminal justice system of Alexander County.

16. Each of said practices is carried out wilfully and maliciously with intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States.

17. Each of said practices is carried out in violation of the rights of plaintiffs and their class under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States.

18. Plaintiffs and their class have no adequate remedy at law for the deprivation of their constitutional rights by defendant as hereinabove set forth. Unless this Court issues an injunction as prayed for, plaintiffs and the plaintiff class will suffer irreparable harm.

Wherefore, plaintiffs respectfully pray that:

1. Defendant be preliminarily and permanently enjoined from depriving plaintiffs and members of the plaintiff class of their constitutional rights in the manner set forth in paragraph 14 of this complaint, and that defendant be required to submit a monthly report to this Court concerning the nature, status and disposition of any complaint brought to him by plaintiffs or members of their class, or by white persons against plaintiffs or members of their class;

2. Defendant be preliminarily and permanently enjoined from requesting more severe bond and sentences for plaintiffs and members of their class than for white persons;

3. Defendant be preliminarily and permanently enjoined from setting more severe charges against plaintiffs

and members of their class than against white persons;

4. This Court maintain continuing jurisdiction in this action;

5. Grant to plaintiffs their costs and reasonable attorneys fees; and

6. Grant such other relief as to the Court may seem just and proper.

Second Claim for Relief

19. Plaintiffs reallege the allegations of paragraphs 1-3, 5-6 and 10-17.

20. Each of the named plaintiffs suffered humiliation, despair, frustration, great anxiety, and physical distress as a result of the practices of defendant alleged in paragraph 14, and in particular by defendant's refusal to permit plaintiffs to initiate criminal proceedings.

Wherefore, plaintiffs respectfully pray that:

1. This Court grant to each of them damages in the amount of $1,000 as compensatory damages and $1,500 as punitive damages.

2. This Court award plaintiffs their costs and reasonable attorneys fees; and

3. This Court grant such other relief as may be just and proper.

Third Claim for Relief

21. Plaintiffs reallege the allegations in paragraphs 1-3, 5, 7-8, and 10-11.

22. As hereinafter set forth more fully, defendants Burke and Meisenheimer have engaged in, and continue to engage in, a pattern and practice of conduct, under color of law, custom and usage of the City of Cairo, Illinois, in the enforcement of criminal justice in said city,

all of which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of law and to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

23. Defendants Burke and Meisenheimer have denied and continue to deny to plaintiffs and members of their class their constitutional rights in the following ways:

(a) Defendants have made or caused to be made or cooperated in the making of arrests and the filing of charges against plaintiffs and members of their class where such charges are not warranted and are merely for the purpose of harassment and to discourage and prevent plaintiffs and their class from exercising their constitutional rights.

(b) Defendants have made or caused to be made or cooperated in the making of arrests and the filing of charges against plaintiffs and members of their class where there may be some colorable basis to the arrest or charge, but the crime defined in the charge is much harsher than is warranted by the facts and is far more severe than like charges would be against a white person.

24. Each of said practices is carried out with intent to deprive plaintiffs and members of their class of the benefits of the criminal justice system of Alexander County.

25. Each of said practices is carried out with intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States.

26. Each of said practices is carried out in violation of the rights of plaintiffs and their class under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States.

27. Plaintiffs and their class have no adequate remedy at law for the deprivation of their constitutional rights by defendants as herein set forth. Unless this Court issues an injunction as prayed for, plaintiffs and the plaintiff class will suffer irreparable harm.

Wherefore, plaintiffs respectfully pray that:

1. Defendants be preliminarily and permanently enjoined from depriving plaintiffs and members of the plaintiff class of their constitutional rights in the manner set forth in paragraph 23 of this complaint, and that defendants be required to submit a monthly report to this Court concerning the nature, status and details of each arrest of and each charge filed against plaintiffs or members of plaintiff class in which the Police Department of the City of Cairo was involved in any way;

2. This Court maintain continuing jurisdiction in this action;

3. Grant to plaintiffs their costs and reasonable attorneys fees; and

4. Grant such other relief as to the Court may seem just and proper.

FOURTH CLAIM FOR RELIEF

28. Plaintiffs reallege the allegations in paragraphs 1-5, and 9-11.

29. As herein after set forth more fully, defendants O'Shea and Spomer have engaged in and continue to engage in, a pattern and practice of conduct, under color of law, custom and usage of Alexander County, Illinois, in the administration of criminal justice in said county, all of which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of law and to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

30. Defendants O'Shea and Spomer have denied and continue to deny to plaintiffs and members of their class their constitutional rights in the following ways:

(a) They set bond in criminal cases without regard to the Constitution and statutes of the State of Illinois requiring that bond be merely an assurance that defendant will appear in court when required, not that it be a punishment, in that they follow an unofficial bond schedule wihout regard to the facts of a case or circumstances of an individual defendant, all in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

(b) On information and belief they set sentences higher for plaintiffs and members of plaintiff class than for white persons and impose harsher conditions.

(c) It is the custom and practice of defendants O'Shea and Spomer to require plaintiffs and members of their class when charged with violations or city ordinances which carry fine and possible jail penalties if the fine cannot be paid, to pay for a trial by jury, all in violation of their rights under the Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

31. Each of said practices is carried out with intent to deprive plaintiffs and members of their class of the benefits of the criminal justice system of Alexander County.

32. Each of said practices is carried out with intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States.

33. Each of said practices is carried out in violation of the rights of plaintiffs and their class under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States.

34. Plaintiffs and their class have no adequate remedy at law for the deprivation of their constitutional rights by defendants as herein set forth. Unless this Court issues an injunction as prayed for, plaintiffs and the plaintiff class will suffer irreparable harm.

Wherefore, plaintiffs respectfully pray that:

1. Defendants be preliminarily and permanently enjoined from depriving plaintiffs and members of their class of their constitutional rights in the manner set forth in paragraph 30;

2. Grant to plaintiffs their costs and attorneys fees herein; and

3. Grant such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

/s/ MARTHA M. JENKINS
Martha M. Jenkins
Lawyers' Committee for
Civil Rights Under Law
909 Washington Avenue
Cairo, Illinois 62914

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Illinois

[Caption Omitted in Printing]

VERIFICATION

We, the undersigned, being duly sworn, say:

1. We are plaintiffs named in the annexed complaint and bring this suit on our behalf and on behalf of all other persons similarly situated.

2. We have read the annexed complaint and know the contents thereof.

3. We know of our own personal knowledge or believe that all of the facts stated therein are true except such as are stated on information and belief, and as to those facts, we believe them to be true.

/s/ JAMES W. BROWN
James W. Brown
/s/ EZELL LITTLETON
Ezell Littleton
/s/ JAMES WILSON
James Wilson
/s/ PRESTON EWING, JR.
Preston Ewing, Jr.

Subscribed and sworn to before me this 21st day of July.

/s/ CLYDIA M. KOEN
Notary Public

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Illinois

Filed October 23, 1970

[Caption Omitted in Printing]

AMENDED COMPLAINT

Plaintiffs, Ezell Littleton, Manker Harris, James Wilson, Carl Hampton, Hazel James, Walter Garrett, Charles Koen, Frank Washington, Curtis Johnson, Cheryl Garrett, Yvonda Taylor, Russell Deberry, Robert Martin, Preston Ewing, Jr., James Brown, Herman Whitfield, Wallace Whitfield, Leroy Lambert, by his father and next friend, Hobert Lambert, Morris Garrett, by his father and next friend, Levi Garrett, individually and as representatives of a class, by their attorneys, Martha Jenkins, James B. O'Shaughnessy and Alan M. Wiseman, complain of defendants, Peyton Berbling, individually and as State's Attorney for Alexander County, Illinois, Earl Sheperd, individually and as investigator for Peyton Berbling, Carl Meisenheimer, as Police Commissioner of the City of Cairo, Illinois, Michael O'Shea, as Magistrate of the Circuit Court for Alexander County, Illinois, and Dorothy Spomer, as Associate Circuit Judge for Alexander County, Illinois. Plaintiffs state as follows:

1. This is a civil-action under Title 42 U. S. C. Sections 1981, 1982, 1983, and 1985 for damages and for preliminary and permanent injunctions and other equitable relief, to enjoin the deprivation, under color of law, custom and usage of Alexander County and the City of Cairo, Illinois, of plaintiffs and members of their class rights, privileges and immunities guaranteed by the First, Sixth, Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States and by Title 42 U. S. C. Sections 1981, 1982, 1983, and 1985.

2. Jurisdiction is conferred on this Court by Title 28 U. S. C. sections 1331 and 1343.

3(a) Plaintiffs are black citizens of the City of Cairo, Illinois, with the exception of plaintiffs Manker Harris and James Brown, who are white citizens of the City of Cairo, Illinois.

(b) They bring this action as a class action, individually and on behalf of all other persons similarly situated in the City of Cairo, Illinois.

(c) The class includes all those who, on account of their race or creed and because of their exercise of First Amendment rights, have in the past and continue to be subjected to the unconstitutional and selectively discriminatory enforcement and administration of criminal justice in Alexander County.

4(a) Plaintiffs are financially poor persons.

(b) They bring this action as a class action, individually and on behalf of all other persons similarly situated in the City of Cairo, Illinois.

(c) The class includes all those who, on account of their poverty, are unable to afford bail, or are unable to afford counsel and jury trials in city ordinance violation cases.

5. As to said classes of persons:

(a) they are so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to the class; (c) the claims of plaintiffs are typical of the claims of the class; (d) plaintiffs will fairly and adequately protect the interests of the class; and (e) defendants have acted and refuse to act on grounds generally applicable to the classes, thereby making appropriate final relief with respect to the class as a whole.

6(a) Defendant Berbling is, and was at all times mentioned herein, the State's Attorney for Alexander County, Illinois and a citizen and resident of that County.

(b) As State's Attorney he is the chief prosecuting attorney for said county.

(c) He has authority to determine when criminal complaints may be filed and warrants issued, whether and how to prosecute violations of state statutes, what the charges should be against accused persons, and also to recommend dismissals and reductions of charges, length of sentences, and the terms thereof.

(d) On information and belief defendant Berbling may also recommend the amount of bond and whether a convicted defendant should pay costs.

7. Defendant Meisenheimer is, and was at all times mentioned herein, a Police Commissioner of the City of Cairo, and a citizen of the City of Cairo, Illinois. As such he supervises the activities of the Cairo Police Department.

8(a). Defendant O'Shea is, and was at all times mentioned herein, the Magistrate for the Circuit Court of Alexander County, Illinois and a citizen of that County. As such, he has the authority to set bond for all persons charged with crime either under state law or city ordinance. He also has the authority to handle preliminary hearings, trials of ordinance violations and misdemeanors. In each of such cases, he determines the outcome and, in the case of ordinances and misdemeanors, the sentence to be imposed.

(b) Defendant Spomer is, and was at all times mentioned herein, the Associate Circuit Judge for Alexander County, Illinois, and a citizen of that county. As such, she has the authority to act in all criminal matters in Alexander County.

9. Defendant Earl Shepherd is, and was at all times mentioned herein, employed by the Office of the State's Attorney as an investigator and assistant to defendant Berbling, and a citizen of Alexander County, Illinois.

FIRST CLAIM FOR RELIEF

10. Since the early 1960's black citizens of Cairo, Illinois, together with a small number of white persons on their behalf, have been actively, peaceably and lawfully seeking equality of opportunity and treatment in employment, housing, education, participation in governmental decision making and in ordinary day-to-day relations with white citizens and officials of Cairo. As an important part of their protest, plaintiffs have participated in and encouraged others to participate in an economic boycott of merchants of the City of Cairo who plaintiffs consider have engaged in racial discrimination.

11. This active and lawful seeking after long overdue constitutional rights has generated and continues to generate a great deal of tension and antagonism from the white citizens and officials of Cairo.

12. As is hereinafter set forth more fully, defendant Berbling has engaged in, and continues to engage in, a pattern and practice of conduct under color of law, custom and usage of Alexander County, Illinois, in the administration of criminal justice in said county, which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of law and the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States and the right to be free from the vestiges of slavery as secured by the Thirteenth Amendment and of rights secured by laws of the United States, *viz.*, Sections 1981, 1982 and 1983 of Title 42, United States Code.

13. Defendant Berbling, with a purpose of depriving plaintiffs of equal protection of the laws or equal privileges and immunities under the law, with a purposeful intent to discriminate upon the basis of race and creed, under color of state law and authority, deprives plaintiffs of rights and

privileges as citizens of the United States by neglecting to provide for their personal safety, although knowing of the possibility of racial disorders, by refusing to prosecute those who threaten plaintiffs' safety and property and by refusing to permit plaintiffs to give evidence against white persons respecting acts threatening their personal safety and property, with the design to intimidate plaintiffs so as to chill their exercise of the First Amendment right to assemble peaceably and their right to hold property to the same extent as is enjoyed by white citizens.

14. Defendant Berbling has denied and continues to deny to plaintiffs and members of their classes as described in paragraphs 3 and 4 herein of their constitutional rights in the following ways:

(a) It has been and continues to be the practice of defendant to refuse to initiate criminal proceedings and to refuse to hear criminal charges against members of the white race upon the complaints of members of the plaintiffs' class and to deprive plaintiffs of their right to give evidence affecting their security, for example:

(1) On March 28, 1969, defendant refused to permit James Wilson to file criminal charges against Charlie Sullivan, a white man, who pointed a gun at him as he (Wilson) attempted to move into the house next door to Charlie Sullivan on 22nd Street, in Cairo, Illinois. Sullivan threatened Wilson with the gun and told him to move the truck containing household furnishings and leave the area, thereby attempting to prevent James Wilson from holding property.

(2) On or about March 29, 1969, defendant refused to permit James Wilson to file criminal charges against Charlie Sullivan who fired shots from a gun around James Wilson's home to in-

timidate his family in order to prevent James Wilson from holding property.

(3) In January, 1970, defendant refused to permit Robert Martin to file charges against Charlie Sullivan, who tried to run him down in a truck while peacefully marching in exercise of his First Amendment rights.

(4) In June, 1970, defendant refused to permit Ezell Littleton to file charges against a white man who without cause or justification assaulted and battered him.

(5) In June, 1970, defendant refused to permit Rev. Manker Harris to file charges against two white policemen of the City of Cairo for attempted murder and/or malicious prosecution.

(6) On August 10, 1970, defendant Berbling, through a subordinate, defendant Earl Shepherd, refused to permit plaintiff Hazel James to file criminal charges against Raymond Hurst, a white man, who had kicked plaintiff James in the stomach while she was peacefully demonstrating against the racially discriminatory practices of merchants and of public officials of the City of Cairo.

(7) In May, 1969, Plaintiff Ewing and eight others could have and desired to bring criminal charges against a white man who threatened them with a shotgun, but did not because they knew of defendant's practice of refusing to take complaints and were discouraged from making useless gestures.

(b) It has been and continues to be the practice of defendant Berbling in those instances where complaints have been filed by black persons against white persons involving misdemeanors to submit such to a grand jury, rather than proceed by information or complaint,

and to interrogate complainants and witnesses before the grand jury with a purposeful intent to discriminate upon the basis of race and creed, thereby depriving plaintiffs and members of their class of their right to give evidence affecting their security and thereby chill their exercise of their right to assemble peaceably, for example: Morris Garrett (a 13 year old boy), on August 8, 1970, during a demonstration against the racially discriminatory practices of merchants and public officials of the City of Cairo, was struck by one Tom Madra. A complaint was filed which was presented to the grand jury. Morris Garrett appeared before the grand jury. Defendant Berbling, rather than questold him regarding the incident, asked him such questions as "did you get paid for picketing?" A no-true bill was returned by the grand jury.

(c) It has been and continues to be the practice of defendant Berbling, in those instances where complaints have been filed by black persons against white persons involving misdemeanors, to submit such to a grand jury, rather than proceed by information or complaint, and, in some instances, fail to interrogate at all the complainant and witnesses respecting the incident, purposefully intending to discriminate upon the basis of race and creed, thereby depriving plaintiffs and members of their class of their right to give evidence affecting their security and thereby chill their exercise of their right to assemble peaceably, for example:

(1) On August 13, 1970, Cheryl Garrett and Yvonda Taylor, ages 18 and 16 respectively, were shot at by one Jack Guetterman, Jr. Rev. Walter Garrett and Ezell Littleton, following a telephone call from the young girls, went to the scene of the shooting. Shortly thereafter police officers ar-

rived. While Rev. Walter Garrett was discussing the situation with one police officer, one Jack Guetterman, Sr. struck Rev. Garrett in the face, causing him to fall to the ground. A complaint was filed by Rev. Walter Garrett respecting this incident. Defendant Berbling presented the complaint to the grand jury, but Rev. Garrett was not interrogated at all respecting the incident. Ezell Littleton, who witnessed the assault, was not called to testify.

(2) On or about August 8, 1970, Curtis Johnson was struck by one Al Moss while demonstrating against the racially discriminatory practices of merchants and public officials of the City of Cairo. A complaint was filed, which was presented to the grand jury. Curtis Johnson, however, was not interrogated by defendant Berbling respecting the incident.

(d) It has been and continues to be the practice of defendant Berbling in the few criminal proceedings he has instituted against white persons at the behest of plaintiffs to inadequately prosecute the cases in order to lose or to settle them on terms more favorable than those against blacks;

(e) It has been and continues to be the practice of defendant Berbling to request or recommend, in cases involving plaintiffs and members of their class, substantially greater bonds and sentences than requested or recommended in cases involving white persons;

(f) It has been and continues to be the practice of defendant Berbling to charge plaintiffs and members of their class with significantly more serious charges for conduct which would result in no charge or a minor charge against a white person.

(g) Defendant Berbling has sought to deprive plaintiffs of their right to give evidence respecting the security of members of their class by seeking the dropping of a criminal charge arising out of a complaint filed by Frank Hollis, a black person, against Tom Madra, a white person, in return for which defendant would drop pending criminal charges against several of the plaintiffs.

15. Each of said practices is carried out wilfully and maliciously with intent to deprive plaintiff and members of their class of the benefits of the criminal justice system of Alexander County and to deprive plaintiffs and members of their class of the right to give evidence against those who threaten their security, peace, and tranquility and the right to hold property as enjoyed by white citizens.

16. Each of said practices is carried out wilfully and maliciously with intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States.

17. Each of said practices is carried out in violation of the rights of plaintiffs and their class under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States and of rights secured by laws of the United States, viz., Sections 1981, 1982 and 1983 of Title 42, United States Code.

18. Plaintiffs and their class have no adequate remedy at law for the deprivation of their constitutional rights by defendant as hereinabove set forth. Unless this Court issues an injunction as prayed for, plaintiffs and the plaintiff classes will suffer irreparable harm.

Wherefore, plaintiffs respectfully pray that:

1. Defendant be preliminarily and permanently enjoined from depriving plaintiffs and members of the plaintiff class of their constitutional rights in the manner set

forth in paragraphs 13 and 14 of this complaint, and that defendant be required to submit a monthly report to this Court concerning the nature, status and disposition of any complaint brought to him by plaintiffs or members of their class, or by white persons against plaintiffs or members of their class.

2. Defendant be preliminarily and permanently enjoined from neglecting his duties of office in failing to interrogate impartially and without discrimination witnesses before the grand jury.

3. Defendant be preliminarily and permanently enjoined from requesting more severe bond and sentences for plaintiffs and members of their class than for white persons;

4. Defendant be preliminarily and permanently enjoined from setting more severe charges against plaintiffs and members of their class than against white persons;

5. This Court maintain continuing jurisdiction in this action;

6. Grant to plaintiffs their costs and reasonable attorneys' fees; and

7. Grant such other relief as to the Court may seem just and proper.

SECOND CLAIM FOR RELIEF

19. Plaintiffs reallege the allegations of paragraphs 1-3, 5-6 and 10-17.

20. Each of the named plaintiffs suffered humiliation, despair, frustration, great anxiety, and physical distress as a result of the practices of defendant alleged in paragraphs 12-14, and in particular by defendant's refusal to permit plaintiffs to initiate criminal proceedings, to give evidence, and to benefit from laws protecting their security to the same extent as white citizens.

Wherefore, plaintiffs respectfully pray that:

1. This Court grant to each of them damages in the amount of $1,000 as compensatory damages and $1,500 as punitive damages.

2. This Court award plaintiffs their costs and reasonable attorneys fees; and

3. This Court grant such other relief as may be just and proper.

THIRD CLAIM FOR RELIEF

21. Plaintiffs reallege the allegations of paragraphs 1-3, 5-6, 9-13 and 15-16.

22. Defendant Berbling in conspiracy with defendant Shepherd, with a purpose of depriving plaintiffs of equal protection of the laws or equal privileges and immunities under the law, with a purposeful intent to discriminate upon the basis of race and creed, under color of state law and authority, deprived plaintiffs of rights and privileges as citizens of the United States, as follows:

(a) Defendants Berbling and Shepherd have conspired to deprive plaintiffs of equal protection of the laws by neglecting to provide for their personal safety, because of their race, although knowing of the possibility of racial disorders, by refusing to prosecute those who threaten plaintiffs' safety.

(b) Defendants Berbling and Shepherd have conspired to prevent plaintiffs from giving evidence against white persons respecting acts threatening their personal safety with the design to intimidate plaintiffs so as to chill their exercise of the First Amendment right to asemble peaceably. For example, on Saturday, August 8, 1970, plaintiff Hazel James was peacefully demonstrating against the racially discriminatory practices of merchants and public officials of the City of Cairo pursuant to a boycott when she was kicked in

the stomach by one Raymond Hurst. Plaintiff James was rushed to a hospital for treatment of the injury sustained. On Monday, August 10, 1970, plaintiff James sought to file a complaint, but defendant Shepherd, at defendant Berbling's direction, refused to allow it.

23. Such practices are carried out in violation of the rights of plaintiffs and their class under the First, Thirteenth and Fourteenth Amendments to the Constitution of the United States and of rights secured by laws of the United States, *viz.*, Sections 1981, 1982, 1983 and 1985 of Title 42, United States Code.

Wherefore, plaintiffs respectfully pray that:

1. This Court grant to each of them damages in the amount of $1,000 as compensatory damages and $1,500 as punitive damages.

2. This Court award plaintiffs their costs and reasonable attorneys fees; and

3. This Court grant such other relief as may be just and proper.

FOURTH CLAIM FOR RELIEF

24. Plaintiffs reallege the allegations of paragraphs 1-3, 5, 9-11, 15-17 and 20.

25. Defendant Shepherd has engaged in, and continues to engage in, a pattern and practice of conduct under color of law, custom and usage of Alexander County, Illinois, which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of law and the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States and of rights secured by laws of the United States, *viz.*, Sections 1981, 1982 and 1983 of Title 42, United States Code.

26. Defendant Shepherd, with a purpose of depriving plaintiffs of equal protection of the laws or equal privileges and immunities under the law, with a purposeful intent to discriminate upon the basis of race and creed, under color of state law and authority, deprives plaintiffs of rights and privileges as citizens of the United States by refusing to permit plaintiffs to give evidence against white persons respecting acts threatening their personal safety, with the design to intimidate plaintiffs so as to chill their exercise of the First Amendment right to assemble peaceably; for example:

On August 10, 1970, defendant Shepherd refused to permit plaintiff Hazel James to file criminal charges against one Raymond Hurst, a white man, who, on August 8, 1970, had kicked plaintiff James in the stomach while she was peacefully demonstrating against the racially discriminatory practices of merchants and public officials of the City of Cairo.

Wherefore, plaintiffs respectfully pray that:

1. This Court grant to each of them damages in the amount of $1,000 as compensatory damages and $1,500 as punitive damages.

2. This Court award plaintiffs their costs and reasonable attorneys fees; and

3. This Court grant such other relief as may be just and proper.

FIFTH CLAIM FOR RELIEF

27. Plaintiffs reallege the allegations in paragraphs 1-3, 5, 7 and 10-11.

28. As hereinafter set forth more fully, defendant Meisenheimer has engaged in, and continues to engage in, a pattern and practice of conduct, under color of law, custom and usage of the City of Cairo, Illinois, in the enforcement

of criminal justice in said city, all of which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of law and to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States and of rights secured by laws of the United States, *viz.*, Sections 1981, 1982, 1983, 1985, and 1986, Title 42, United States Code.

29. Defendant Meisenheimer has denied and continues to deny to plaintiffs and members of their class their constitutional rights in the following ways:

(a) Defendant has made or caused to be made or cooperated in the making of arrests and the filing of charges against plaintiffs and members of their class where such charges are not warranted and are merely for the purpose of harassment and to discourage and prevent plaintiffs and their class from exercising their constitutional rights.

(b) Defendant has made or caused to be made or cooperated in the making of arrests and the filing of charges against plaintiffs and members of their class where there may be some colorable basis to the arrest or charge, but the crime defined in the charge is much harsher than is warranted by the facts and is far more severe than like charges would be against a white person.

30. Each of said practices is carried out with intent to deprive plaintiffs and members of their class of the benefits of the criminal justice system of Alexander County.

31. Each of said practices is carried out with intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States.

32. Each of said practices is carried out in violation of the rights of plaintiffs and their class under the First,

Thirteenth and Fourteenth Amendments to the Constitution of the United States.

33. Plaintiffs and their class have no adequate remedy at law for the deprivation of their constitutional rights by defendants as herein set forth. Unless this Court issues an injunction as prayed for, plaintiffs and the plaintiff class will suffer irreparable harm.

Wherefore, plaintiffs respectfully pray that:

1. Defendant be preliminarily and permanently enjoined from depriving plaintiffs and members of the plaintiff class of their constitutional rights in the manner set forth in paragraph 29 of this complaint, and that defendants be required to submit a monthly report to this Court concerning the nature, status and details of each arrest of and each charge filed against plaintiffs or members of plaintiff class in which the Police Department of the City of Cairo was involved in any way;

2. This Court maintain continuing jurisdiction in this action;

3. Grant to plaintiffs their costs and reasonable attorneys fees; and

4. Grant such other relief as to the Court may seem just proper.

SIXTH CLAIM FOR RELIEF

34. Plaintiffs reallege the allegations in paragraphs 1-5 and 8 and 10-11.

35. As hereinafter set forth more fully, defendants O'Shea and Spomer have engaged in and continue to engage in, a pattern and practice of conduct, under color of law, custom and usage of Alexander County, Illinois, in the administration of criminal justice in said county, all of which has deprived and continues to deprive plaintiffs and members of their class of their rights to due process of

law and to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

36. Defendants O'Shea and Spomer have denied and continue to deny to plaintiffs and members of their class their constitutional rights in the following ways:

(a) They set bond in criminal cases without regard to the Constitution and statutes of the State of Illinois requiring that bond be merely an assurance that defendant will appear in court when required, not that it be a punishment in that they follow an unofficial bond schedule without regard to the facts of a case or circumstances of an individual defendant, all in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States.

(b) On information and belief they set sentences higher for plaintiffs and members of plaintiffs' class than for white persons and impose harsher conditions.

(c) It is the custom and practice of defendants O'Shea and Spomer to require plaintiffs and members of their class when charged with violations or city ordinances which carry fines and possible jail penalties if the fine cannot be paid, to pay for a trial by jury, all in violation of their rights under the Sixth, Eighth and Fourteenth Amendments to the Constitution of the United States.

37. Each of said practices is carried out with intent to deprive plaintiffs and members of their class of the benefits of the criminal justice system of Alexander County.

38. Each of said practices is carried out with intent to deter plaintiffs and members of their class from engaging in a peaceful boycott and other activities protected by the First Amendment to the Constitution of the United States.

39. Each of said practices is carried out in violation of the rights of plaintiffs and their class under the First,

Thirteenth and Fourteenth Amendments to the Constitutions of the United States.

40. Plaintiffs and their class have no adequate remedy at law for the deprivation of their constitutional rights by defendants as herein set forth. Unless this Court issues an injunction as prayed for, plaintiffs and the plaintiff class will suffer irreparable harm.

Wherefore, plaintiffs respectfully pray that:

1. Defendants be preliminarily and permanently enjoined from depriving plaintiffs and members of their class of their constitutional rights in the manner set forth in paragraph 36.

2. Grant to plaintiffs their costs and attorneys fees herein; and

3. Grant such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

/s/ James B. O'Shaughnessy
James B. O'Shaughnessy
/s/ Alan M. Wiseman
Alan M. Wiseman

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Illinois

Filed on August 25, 1970

[CAPTION OMITTED IN PRINTING]

MOTION TO STRIKE COMPLAINT AND DISMISS CAUSE

Now come Michael O'Shea, as Magistrate of the Circuit Court of Alexander County, Illinois and Dorothy Spomer, as Associate Circuit Judge for Alexander County, Illinois, defendants in the above entitled cause, by William J. Scott, Attorney General, and moves the court to enter its order striking the Complaint and dismissing this cause as to these defendants with prejudice and forever bar this action as to these defendants and as grounds therefor, state unto the court:

1. That the above entitled cause is a civil action.

2. That at all times mentioned in plaintiff's Complaint herein, these defendants were and still are Judges of the Circuit Court of Alexander County.

3. That at all times mentioned in the plaintiff's Complaint herein, these defendants were acting in their judicial capacity as Judges.

4. That by virtue of their judicial office and their acts and doings as judges these defendants are as a matter of law immune from civil suits based upon their judicial acts.

5. That the plaintiff's Complaint fails to state a claim against these defendants upon which relief can be granted.

6. That plaintiff's Complaint does not comply with Rule 8(e)(1) and 10(b) of the Federal Rules of Civil Procedure.

Wherefore, these defendants move that this Complaint be stricken as to them and that the cause of action as to them be dismissed with prejudice.

MICHAEL O'SHEA, Magistrate of the Circuit Court of Alexander County,
DOROTHY SPOMER, Associate Circuit Judge for the Circuit Court of Alexander County,

Defendants,

WILLIAM J. SCOTT, Attorney General of the State of Illinois,

Their Attorney.

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Illinois

Filed Oct. 29, 1970

[Caption Omitted in Printing]

Now come defendants, Peyton Berbling, individually, and as State's Attorney for Alexander County, Illinois, and Earl A. Shepherd, Jr. (erroneously sued herein as Earl Sheperd), individually, and as investigator for Peyton Berbling, State's Attorney of Alexander County, Illinois, and say:

A.

They move to dismiss the Amended Complaint herein and this action as against them, and each of them, and in support thereof, say:

1. The Amended Complaint wholly fails to state a claim upon which the relief prayed or any relief can be granted.

2. It appears from the face of the Amended Complaint that defendant, Peyton Berbling, is the duly elected, qualified and acting State's Attorney for Alexander County, Illinois, and that defendant, Earl A. Shepherd, Jr., is and was at all relevant times, an employee and assistant to the State's Attorney for Alexander County, Illinois; it further appears from the face of the Amended Complaint that the matters and things complained of against said defendants, and each of them, allegedly transpired while said defendants held their respective offices and while they and each of them were acting in their official capacities as such State's Attorney and his employee and assistant.

3. The matters and things alleged against each of said defendants occurred, if at all, as a result of the performance by them, and each of them of acts of a judicial or quasi-judicial nature in the official position as State's Attorney

of Alexander County, Illinois, and his employee and assistant and they are, therefore, as a matter of law immune from civil action under the Civil Rights Act mentioned in the Amended Complaint, or otherwise.

4. The paragraphs under the caption "Third Claim for Relief" and the prayers for relief thereunder, as well as all references in this action to Title 42, U. S. C., Section 1985, should be dismissed or stricken from the Amended Complaint herein for failure to state a claim upon which relief can be granted, by reason of the fact that there are no allegations of any conspiracy to prevent, by force, intimidation, or threat, plaintiffs, or any or either of them, from enjoying the rights and privileges set forth in said section.

B.

In the alternative, these defendants move that the following portions of said Amended Complaint, and each of the same, be stricken:

1. With respect to the allegations of said Amended Complaint pertaining to a Class Action, paragraphs 3(a), 3(b), 3(c), 4(a), 4(b), 4(c), 5(a) and all references to "members of their class" contained in paragraphs 12, 14, 14(a), 14(b), 14(c), 14(e), 14(f), 14(g), 15, 16, 17, 18, paragraphs 1, 3 and 4 of the prayers for relief under the caption "First Claim for Relief", and all such references in paragraphs 23 (under the caption "Second Claim for Relief") and paragraph 25 (under the capition "Fourth Claim for Relief").

2. The allegations of said Amended Complaint are wholly insufficient to warrant the maintaining of a class action under the provisions of Rule 23 of the Federal Rules of Civil Procedure.

3. It affirmatively appears from the face of the Amended Complaint that common questions of fact with respect to

the specific actions alleged against these defendants do not exist and such allegations will not support a class action.

4. The class or classes for which this action is attempted to be maintained are not sufficiently and specifically described and cannot be categorized as "black citizens of the City of Cairo, Illinois" or "those who, on account of their poverty, are unable to afford bail, or are unable to afford counsel and jury trials" within the City of Cairo, Illinois.

5. Plaintiffs are neither representative of nor authorized to act or speak for all of the black citizens or poor people of the City of Cairo, Illinois.

6. Such classes, or neither of them, cannot be defined or sufficiently described to authorize a class action.

7. The following paragraphs should be stricken from the Complaint because they are redundant, immaterial, impertinent and scandalous, in violation of Rule 12(f) of the Federal Rules of Civil Procedure, or because they contain allegations which are so vague, ambiguous and unspecific that it is impossible to prepare and prosecute a proper defense with respect thereto, all in violation of Rule 8(e)(1) of the Federal Rules of Civil Procedure, to-wit: Paragraphs 10, 11, 13, 14(a)(1), 14(a)(2), 14(a)(3), 14(a)(4), 14(a)(6), 14(a)(7), 14(b), 14(c), 14(c)(1), 14(c)(2), 14(d), 14(e), 14(f), 14(g) and 20, all of the Amended Complaint.

8. With respect to the prayers for relief against these defendants:

(a) The prayers for relief under the caption "First Claim for Relief" would involve an unwarranted and unlawful invasion of the duties and responsibilities of defendant, Peyton Berbling, as the duly elected, qualified and acting State's Attorney of Alexander County, Illinois, and would constitute an invasion of and interference with the exercise by him of his official discretion and judgment and the powers and discretion of the Grand Jury of Alexander County, Illinois; in addition, the grant-

ing of such prayers would involve interpretations and standards which are impossible of ascertainment.

(b) With respect to the prayers for relief contained under the captions "Second Claim for Relief", "Third Claim for Relief", and "Fourth Claim for Relief", there are no allegations showing or alleging that plaintiffs, or either of them, have sustained any monetary damages and there are no allegations in the Amended Complaint sufficient to entitle plaintiffs, or either of them to punitive damages.

/s/ JOHN M. FERGUSON
John M. Ferguson
One South Church Street
Belleville, Illinois 62220
277-1110 (618)

/s/ HAROLD G. BAKER, JR.
Harold G. Baker, Jr.
One South Church Street
Belleville, Illinois 62220
277-1110 (618)

IN THE UNITED STATES DISTRICT COURT
For the Eastern District of Illinois
Filed November 10, 1970
[Caption Omitted in Printing]

ELECTION TO STAND ON MOTION TO STRIKE COMPLAINT AND DISMISS CAUSE AND BRIEF IN SUPPORT OF SUCH MOTION HERETOFORE FILED

Now comes Michael O'Shea as Magistrate of the Circuit Court of Alexander County, Illinois, and Dorothy Spomer as Associate Circuit Judge for Alexander County, Illinois, defendants in the above entitled cause by William J. Scott, Attorney General of the State of Illinois, advising this court that these defendants elect to stand on their Motion to Strike Amended Complaint and Dismiss Cause. The court is further advised that these defendants adopt their brief heretofore filed in support of said Motion.

Wherefore, these defendants move that the amended complaint filed herein be stricken as to them and that the cause of action as to them be dismissed with prejudice.

MICHAEL O'SHEA,
Magistrate of the Circuit Court of Alexander County,

DOROTHY SPOMER,
Associate Circuit Judge for the Circuit Court of Alexander County,

Defendants.

WILLIAM J. SCOTT,
Attorney General of the State of Illinois,

Their Attorney.

SUPREME COURT OF THE UNITED STATES
Office of the Clerk
Washington, D. C. 20543

April 2, 1973

Re: O'Shea v. Littleton, No. 72-953
Spomer v. Littleton, No. 72-955

Dear Sir:

The Court today took the following action in the above cases:

"The petitions for writs of certiorari are granted and the cases are set for oral argument in tandem."

Very truly yours,
MICHAEL RODAK, JR.,
Clerk.